

The Honorable Thomas S. Zilly

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

NEXTUNE, INC., a Washington Corporation,  
Plaintiff,

v.

ROBERT BUCKNER McKINNEY,  
individually; CHRISTOPHER SCOTT  
HARRISON, individually; and EMI MUSIC  
NORTH AMERICA, a Delaware Corporation,  
Defendants.

Case No. 2:12-cv-01974

DECLARATION OF MICHAEL DUKANE  
IN OPPOSITION TO DEFENDANT  
HARRISON'S MOTIONS TO DISMISS

I, Michael DuKane, declare as follows:

1. I am the President and CEO of plaintiff NextTUNE, Inc. ("NextTUNE"). I am over 18 years of age, have personal knowledge as to the matters set forth herein, and am competent to testify to them.

2. NextTUNE is a privately-held company incorporated in Washington and operating from Redmond, Washington. NextTUNE provides a digital background music service to the retail, hospitality and general business industries. NextTUNE also provides commercial sound system sales, installation and service throughout the United States.

3. DMX, Mood Media and Pandora are all direct competitors of nextTUNE.

DECLARATION OF MICHAEL DUKANE IN OPPOSITION TO  
DEFENDANT HARRISON'S MOTIONS TO DISMISS - 1  
Case No. 2:12-CV-01974

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1           4.       Attached as Exhibit A is a true and correct copy of a December 18, 2012 printout  
2 of Mr. Harrison's "LinkedIn" profile, which confirms his long-standing employment with  
3 nextTUNE's direct competitors: DMX and Mood Media, and current employer Pandora.

4           5.       Attached as Exhibit B is a true and correct copy of a December 18, 2012 printout  
5 from the DMX website, which identifies Harrison as "[c]urrently serving as Chief Operating  
6 Officer of DMX, Inc."

7           6.       Attached as Exhibit C are true and correct copies of a printouts from the DMX  
8 website and other articles, which confirm the partnership between DMX (Harrison's employer  
9 since 2005) and Pandora (Harrison's new employer and direct competitor).

10          7.       As alleged in the complaint, Defendant McKinney solicited documents containing  
11 extremely confidential and nextTUNE's proprietary information. The documents I provided to  
12 Mr. McKinney clearly identified nextTUNE as being located in Washington. Further, the  
13 documents I provided to Mr. McKinney were produced with the explicit understanding that the  
14 documents would remain confidential. I never gave Mr. McKinney permission to provide those  
15 documents to anyone else, especially anyone affiliated with nextTUNE's direct competitors (such  
16 as Mr. Harrison). Had I known Mr. McKinney intended to disclose the documents I provided to  
17 Mr. Harrison, I never would have provided those documents to Mr. McKinney.

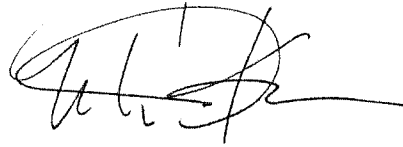
18          8.       Prior to the meeting with Mr. McKinney in Texas, I had no knowledge that  
19 Mr. Harrison would be attending the meeting. At the meeting, however, I saw that Mr. Harrison  
20 had annotated and flagged copies of the documents I provided to Mr. McKinney. Mr. Harrison  
21 was the driving force of the meeting, actively asking questions concerning the information I  
22 provided to Mr. McKinney. His questions clearly demonstrated that Mr. Harrison was well-  
23 informed as to the content of the documents I provided to Mr. McKinney.

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DECLARATION OF MICHAEL DUKANE IN OPPOSITION TO  
DEFENDANT HARRISON'S MOTIONS TO DISMISS - 2  
Case No. 2:12-CV-01974

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SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1 I declare under penalty of perjury that the foregoing is true and correct. Executed at  
2 Seattle, Washington this 31<sup>st</sup> day of December, 2012.

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Michael DuKane

DECLARATION OF MICHAEL DUKANE IN OPPOSITION TO  
DEFENDANT HARRISON'S MOTIONS TO DISMISS - 3  
Case No. 2:12-CV-01974

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

**CERTIFICATE OF SERVICE**

I certify that on December 31, 2012, a true copy of the foregoing document was served electronically upon the parties via CM/ECF, or as indicated, as follows:

Don Paul Badgley  
Badgley Mullins Law Group  
701 Fifth Avenue, Suite 4750  
Seattle, Washington 98104  
Phone: 206-621-6566  
Fax: 206-621-9686  
Email: [donbadgley@badgleynullins.com](mailto:donbadgley@badgleynullins.com)  
*Counsel for Defendant Christopher Scott Harrison*

☐ via Hand Delivery  
☐ via First Class Mail, postage prepaid  
☐ via Facsimile  
☐ via E-mail  
☒ via Electronic Court Filing

Robert Buckner McKinney  
2203 East 5<sup>th</sup>  
Austin, Texas 78762

☐ via Hand Delivery  
☒ via First Class Mail, postage prepaid  
☐ via Facsimile  
☐ via E-mail  
☐ via Electronic Court Filing

EMI Music North America  
c/o Melissa Battino  
Director, Legal Affairs  
150 5<sup>th</sup> Avenue  
New York, New York 10011

☐ via Hand Delivery  
☒ via First Class Mail, postage prepaid  
☐ via Facsimile  
☐ via E-mail  
☐ via Electronic Court Filing

*s/Jason R. Donovan*  
Jason R. Donovan

# Exhibit A

To Declaration Of Michael DuKane In Opposition  
To Defendant Harrison's Motions To Dismiss



## Christopher Harrison

Assistant General Counsel at Pandora  
Austin, Texas(Austin, Texas Area) | Entertainment

### Join LinkedIn and access Christopher Harrison's full profile.

As a LinkedIn member, you'll join 175 million other professionals who are sharing connections, ideas, and opportunities. And it's free! You'll also be able to:

- See who you and **Christopher Harrison** know in common
- Get introduced to **Christopher Harrison**
- Contact **Christopher Harrison** directly

[View Full Profile](#)

### Christopher Harrison's Overview

Current	<b>Assistant General Counsel at Pandora</b> <b>Board Member at Austin Music Foundation</b> <b>Council Member at TESLAW</b> <a href="#">see all</a>
Past	<b>Attorney at Christopher Harrison, PLLC</b> <b>Global Director, Content and Licensing at Mood Media</b> <b>President, Emerging Services at Mood Media</b> <a href="#">see all</a>
Education	<b>University of North Carolina School of Law</b> <b>University of North Carolina at Chapel Hill</b>
Recommendations	<b>4 people have recommended Christopher</b>
Connections	<b>500+ connections</b>
Websites	<b>Blog</b>

### Christopher Harrison's Experience

#### Assistant General Counsel

##### Pandora

Public Company; 501-1000 employees; Internet industry  
December 2012– Present (1 month) | Oakland, CA

#### Board Member

##### Austin Music Foundation

Nonprofit; 1-10 employees; Music industry  
June 2011– Present (1 year 7 months) | Austin, Texas Area

The Austin Music Foundation strengthens and connects the local music community with innovative programs that empower musicians and fuel Austin's creative economy.

[www.AustinMusicFoundation.org](http://www.AustinMusicFoundation.org)

#### Council Member

##### TESLAW

July 2010– Present (2 years 6 months)

The Entertainment and Sports Law Section is a voluntary organization within the State Bar of Texas and consists of more than 500 licensed attorneys throughout the state who practice entertainment and sports law. Section members represent a wide variety of clients including employers, employees and entertainment and sports organizations, in both the private and public sectors.

#### Adjunct Professor

##### University of Texas School of Law

September 2009– Present (3 years 4 months)

Adjunct Professor teaching Music Law Seminar, which introduces law school students to the law as it applies to the music business. Topics include legal issues surrounding writing music, recording music, performing music, distributing music (both physically and digitally), licensing music, and miscellaneous but related topics such as trademarks and rights of publicity.

#### Attorney

##### Christopher Harrison, PLLC

April 2011– November 2012 (1 year 8 months) | Austin, Texas Area

I represent licensees in negotiations with performing rights organizations and individual rights holders, primarily regarding the acquisition of music content. I also represent rights holders in identifying unauthorized use of copyrighted works and bringing enforcement actions to recover remuneration for such past unauthorized uses.

#### Global Director, Content and Licensing

##### Mood Media

Public Company; 1001-5000 employees; MM; Marketing and Advertising industry  
May 2012– June 2012 (2 months) | Austin, Texas Area

As Mood Media's Global Director of Content and Licensing, I am responsible for the acquisition, licensing and administration of the content used across all of our audio and visual services. Content programming functions, such as music programming and advertising solutions (e.g., voice and messaging) will report to me. I work closely with our European leadership team to coordinate international licensing efforts. In addition, the legal and human resource functions of North America will report to me.

#### President, Emerging Services

##### Mood Media

Public Company; 1001-5000 employees; MM; Marketing and Advertising industry  
May 2012– June 2012 (2 months) | Austin, Texas Area

As Mood Media's President of Emerging Services, I am responsible for growing partnerships and expanding service offerings with our residential partners including DIRECTV, DISH and the National Cable Television Cooperative, while identifying new growth opportunities for the sale and distribution of our content and services.

#### Chief Operating Officer

##### DMX, Inc.

Privately Held; 11-50 employees; Information Technology and Services industry  
July 2011– May 2012 (11 months) | Austin, Texas

Reporting directly to the CEO, I have primary responsibility for DMX's day-to-day operating activities, including revenue and sales growth; expense, cost and margin control; and monthly, quarterly and annual financial goal attainment. With seven direct reports managing nearly 300 employees, I have primary responsibility for Brand Strategy, Human Resources, Operations and Supply Chain Management, Marketing, Sales, Customer Service and Account Management, Business Affairs and Licensing, and DMX's Latin American operations. Along with the CEO, I am responsible for the strategic planning, resource allocation and communication of key organizational goals, including best-in-class delivery of music services to 100,000 commercial businesses in the U.S. and Canada and 25 million homes in North and South America.

#### General Counsel

##### DMX, Inc.

Privately Held; 11-50 employees; Information Technology and Services industry  
September 2008– July 2011 (2 years 11 months) | Austin, Texas

Implemented the first-ever direct licensing initiative to secure the public performance, reproduction and distribution rights to musical compositions directly from music publishers, resulting in 1,000+ licenses covering more than 7,000 catalogs.

Led successful litigation efforts to obtain the first-ever adjustable fee blanket licenses from ASCAP and BMI to afford DMX credit against its blanket fees for the public performance of works licensed directly from music publishers, in which both courts adopted DMX' position, resulting in more than \$5.5mm in annual savings.

- Broadcast Music, Inc. v. DMX, Inc., 08 Civ. 216 (LLS), 2010 U.S. Dist. LEXIS 78417, (S.D.N.Y. July 26, 2010); on appeal at 10-3429-cv (Second Circuit). BMI sought payments of \$41.81 per location per year. Judge Stanton adopted DMX' lowest proposal of \$18.91.
- In Re Application of THP Capstar Acquisition Corp. (now known as DMX, Inc.), 09 Civ. 7069 (DLC), 2010 U.S. Dist. LEXIS 131424, (S.D.N.Y. December 7, 2010); on appeal at 11-127-cv (Second Circuit). ASCAP sought payments of \$49.50 per location per year. Judge Cote adopted DMX' lowest proposal of \$13.74.

Responsible for all necessary music licenses, including public performance, reproduction, distribution and synchronization associated with the musical compositions and sound recordings, as applicable, utilized as part of DMX' music services to (a) commercial establishments, (b) private residences, (c) personal computers and mobile devices as a digital stream and/or digital download, and (e) personal portable media devices or other physical media.

- 2,000+ catalog-wide licenses with record labels;
- 1,000+ catalog-wide licenses with music publishers
- Hundreds of individual synchronization licenses

Responsible for royalty accounting for millions of performances of musical compositions and sound recordings performed every month as part of DMX' many music services.

#### Managing Director

##### DMX Residential, Inc.

January 2008– April 2011 (5 years 4 months)

As Managing Director of DMX's residential music service, I was responsible for obtaining the largest recurring revenue contract in the companies history. Under my direction, DMX increased its penetration in the residential music space from just under 2mm households to more than 19mm households.

#### VP Business Affairs

##### DMX, Inc.

Privately Held; 11-50 employees; Information Technology and Services industry  
September 2005– September 2008 (3 years 1 month)

Drafted and negotiated hundreds of agreements, including service agreements, content license agreements, office lease agreements, equipment purchase agreements, vendor finance agreements, software license agreements, acquisition and divestiture agreements, satellite transport agreements, employment agreements, confidentiality agreements, and dealer and distributor agreements.

#### Associate

##### Fulbright & Jaworski

Partnership; 1001-5000 employees; Legal Services industry  
September 2001– September 2005 (4 years 1 month)

My practice focused on trademark and false advertising litigation. I represented several pharmaceutical companies in a variety of false advertising claims resulting in favorable settlements for the clients. I represented a national retailer of home improvement and construction products and services in a trademark infringement case involving a well-known tag line resulting in a favorable outcome for the client. I represented a national magazine publication against a trademark licensee in a breach of license case resulting in the licensee voluntarily relinquishing its license.

#### Christopher Harrison's Skills & Expertise

Licensing    Litigation    Licensing Agreements    Music Industry    Social Media    New Business Development

#### Christopher Harrison's Publications

##### The Politics of the International Pricing of Prescription Drugs

Praeger | 2004

Authors: Christopher Harrison

Harrison analyzes how the U.S. research pharmaceutical industry, faced with domestic political opposition to the prices it charged for prescription drugs, chose to pursue its policy goal of greater appropriability of its intellectual property through the institutions of foreign economic policymaking.

#### Christopher Harrison's Education

##### University of North Carolina School of Law

JD

1999 – 2001

##### University of North Carolina at Chapel Hill

PhD, Political Science  
1994 – 2001

#### Christopher Harrison's Additional Information

Websites:

• [Blog](#)

Groups and  
Associations:



Digital Media Lawyers



Entertainment Lawyers



Intersection: Bands & Brands



MAYAN FAMILIES



Music & Copyright



Music & Entertainment Professionals



Music & Marketing



Music Industry Forum



Music Royalties - ASCAP, BMI, SESAC, SoundExchange, and More



Music labels and Publishers



The Copyright Society of the USA

Contact Christopher for:

- job inquiries
- business deals
- getting back in touch

- expertise requests
- reference requests

View Christopher Harrison's full profile to...

- See who you and Christopher Harrison know in common
- Get introduced to Christopher Harrison
- Contact Christopher Harrison directly

[View Full Profile](#)

Not the Christopher Harrison you were looking for? [View more »](#)

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LinkedIn Corporation © 2011



# Exhibit B

To Declaration Of Michael DuKane In Opposition  
To Defendant Harrison's Motions To Dismiss

# DMX

## About Us

R. Steven Hicks, Chairman

John D. Cullen, CEO

Paul D. Stone, President

Kimberly K. Shipman, Chief Financial Officer

Christopher S. Harrison, Chief Operating Officer

### R. Steven Hicks Chairman of DMX



Hicks is Chairman of Capstar Partners, LLC formed in June 2000. Capstar Partners is a private investment company which participates in both the funding of early stage technology companies and traditional investments. Capstar Partners primary seed stage investments are in the areas of Broadcast/Media and Financial Services. Traditional investments include real estate, publicly traded stocks, and private non-technology companies. THP Capstar, an affiliate of Capstar Partners, successfully acquired DMX in 2005 for \$75 million.

Prior to forming Capstar Partners, LLC, Hicks was Vice Chairman of AMFM Inc. (NYSE: AFM), the nation's largest owner and operator of radio stations, with over 450 radio stations in markets across the U.S. In 1996, Hicks founded Capstar Broadcasting Corporation, and led Capstar Broadcasting and its 350 radio stations to a successful public offering on the New York Stock Exchange in 1998. In August 1999 Capstar Broadcasting merged with Dallas-based Chancellor Media Corporation, another radio industry powerhouse, and in a stock swap valued at \$4.1 billion, AMFM Inc. was born. In addition to serving AMFM Inc. as Vice Chairman, Hicks was President of its New Media division, which developed Internet products and technologies for the radio industry.

Hicks bought his first radio station at age 29 and co-founded Hicks Communications, Inc., in 1979, acquiring stations in Texas, Oklahoma, and Louisiana. In 1993, Hicks co-founded SFX Broadcasting, Inc., building it into a publicly traded industry leader and one of the five largest radio groups in the country. Hicks left the company in mid-1996 to begin building the Capstar Broadcasting group.

Steve Hicks made radio history by inventing the local marketing agreement (LMA), the forerunner to the radio duopoly, which has dramatically changed the way the broadcasting industry does business by allowing consolidation of radio station operations. This innovation changed FCC regulations and returned many radio stations to profitability, increasing the value of broadcast properties across the nation. Eventually, Hicks' new

system of management helped persuade Congress to change ownership rules in the 1996 Telecommunications Act.

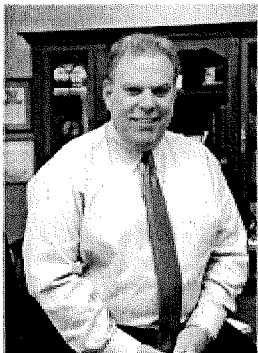
A 33-year veteran of the radio broadcasting industry, including 20 as a station owner, Hicks was named Radio Executive of the Year and was one of the 10 Most Powerful People in Radio by Radio Ink magazine, and was also honored as Ernst & Young Entrepreneur of the Year. In 1996, Hicks was recognized by the Texas Association of Broadcasters as Broadcaster of the Year. He serves on numerous charitable and professional boards.

A father of three children, two stepchildren, and four grandchildren, he makes his home in Austin, Texas, with his wife, Donna.

**Activities:** Director of National Radio Broadcasters Association, 1982-1986 Board of Texas Association of Broadcasters Young Presidents Organization, Chapter Chairman 1998 World Presidents Organization Chief Executives Organization Austin Museum of Art, National Chair of Laura Bush Endowment Bush 2000, Pioneer RNC Republican Regent 2000.

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## **John D. Cullen CEO of DMX**



Cullen is a Partner in Capstar Partners, a private investment company that participates in both the funding of early stage technology companies and traditional investments with a focus on media and real estate. THP Capstar, an affiliate of Capstar Partners, successfully acquired DMX in 2005 for \$75 million. Cullen currently is the CEO of DMX, Inc.

Previously, Cullen served as a member of the Executive Team with Clear Channel (NYSE:CCU), acting as President of the International Division and as the Senior Vice President for Clear Channel Radio. In this role, he streamlined operations in all markets, developed and implemented systems and managed acquisitions.

Prior to joining Clear Channel, Cullen served as the President of the New Media division of AMFM (NYSE:AFM) where he supervised the systems, services and technology initiatives for AMFM including Katz Media Group, Prophet Systems, Galaxy, Star Performance and StarSystems. In the technology arena, he managed and secured buy-in for the development and installation of the Prophet digital audio system for all AMFM properties and continued sponsorship of the Galaxy unified Traffic, Billing, Inventory and Yield Management System.

Prior to AMFM, Cullen was the Chief Operating Officer (COO) of Capstar Broadcasting Partners (NYSE:CRB), where he successfully managed what was previously the largest radio broadcast company in the United States. Formed in 1996, the company became America's largest owner of radio stations within 18 months. After a

successful IPO in 1998, Capstar was merged into AMFM (NYSE:AFM) in 1999 and later into Clear Channel Communications. As COO, Cullen was part of the Capstar team that raised \$2.1 billion of investment capital, negotiated numerous acquisitions and sales transactions, integrated multiple operating units, implemented management reporting systems and developed an efficient corporate infrastructure in a compressed time period.

Additionally, Cullen served as President and CEO of Gulfstar Broadcasting, where he managed the eight-station group into a \$233,000,000 eighty-seven station asset. Prior to 1996, Cullen held various management positions within SFX, Capstar, Cox and Sterling Communications.

Cullen resides in Austin, Texas and is active in numerous civic and charitable organizations.

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### **Paul D. Stone President of DMX**



Stone is affiliated with Capstar Partners, a private investment company that participates in the funding of early stage technology companies and traditional investments with a focus on media and real estate. THP Capstar, an affiliate of Capstar Partners, successfully acquired DMX in 2005 for \$75 million. Stone currently is the President of DMX, Inc.

Stone also serves as President of Stone Management Company (SMC), a financial consulting services and investment company specializing in media and other high margin growth industries. By partnering with seasoned operating veterans in each industry and capitalizing on relationships with equity fund operators developed through years in the finance industry, SMC is developing a portfolio of profitable companies with high growth potential.

Prior to forming SMC in 2002, Stone served as Executive Vice President of Activant Solutions (formerly CCITriad), a \$400 million technology company that develops and supports information systems for automotive parts distributors and hardware stores. Formed in 1997 as a merger/LBO sponsored by Hicks Muse Tate & Furst, Inc., Activant struggled under poor management and significant debt. As EVP, Stone stabilized the business and significantly improved cash flow by implementing efficient operating systems, reorganizing corporate and operational infrastructures that restored investor confidence.

The Activant turnaround came on the heels of his tenure as Chief Financial Officer for Capstar Broadcasting Corporation (NYSE:CRB) from 1997-1999. Formed in 1996, the company became America's largest owner of radio stations within 18 months. After a successful IPO in 1998, Capstar was merged into AMFM (NYSE:AFM) in

1999 and later into Clear Channel Communications. As CFO, Stone was part of the Capstar team that raised \$2.1 billion of investment capital, negotiated numerous acquisitions and sales transactions, integrated multiple operating units, implemented management reporting systems and developed an efficient corporate infrastructure in a compressed time period.

Previous experience in media included a position as Chief Financial Operator of GulfStar Broadcasting from 1996-1997, a \$220 million operator of radio stations that was merged into Capstar Broadcasting Corporation in 1997. Stone raised \$125 million of investment capital, engineered a financial turnaround, negotiated acquisitions, integrated 45 radio properties in 12 markets, developed management reporting systems and structured final merger into Capstar.

Previously, Stone served as a Vice President of Hicks, Muse, Tate and Furst, a diversified private investment firm with over \$14 billion of invested capital under management. During this time, he performed acquisition due diligence, established operational performance plans with management of portfolio companies, developed investor reporting systems and monitored personal investments for principals.

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### **Kimberly K. Shipman Chief Financial Officer of DMX**



Shipman has over 15 years of experience in financial-related fields. Her areas of expertise include M & A transaction diligence and merger integration, internal controls development, financial statement analysis, budgets, forecasting and international operations management.

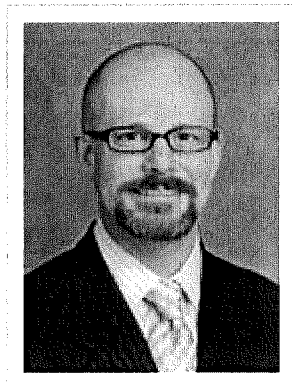
Prior to DMX, Shipman worked for Price Waterhouse Coopers where she led due diligence efforts for approximately 20 transactions with a combined transaction value of greater than \$5 billion and directed buy-side, sell-side and reverse diligence efforts for 10 corporate and two private equity clients.

Shipman previously worked as a Regional Controller with the radio division of Clear Channel Communications. Here she developed consolidated weekly, monthly and quarterly reporting structures for 236 business units in 10 countries and led the implementation of accounting policy and procedure changes resulting from two mergers and two internal reorganizations within 3 years. She also organized an accounting system conversion for five business units with revenue of \$150 million.

Shipman is an honors graduate from The University of Texas at Austin's Executive MBA program.

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## Christopher S. Harrison Chief Operating Officer of DMX



Currently serving as Chief Operating Officer of DMX, Inc., Harrison reports directly to the CEO and has primary responsibility for DMX's day-to-day operating activities, including revenue and sales growth; expense, cost and margin control; and monthly, quarterly and annual financial goal attainment. With six direct reports managing nearly 300 employees, Harrison has primary responsibility for Brand Strategy, Human Resources, Operations and Supply Chain Management, Marketing, Sales, Customer Service and Account Management, Licensing and Business Affairs, and DMX's Latin American operations. Along with the CEO, Harrison is responsible for the strategic planning, resource allocation and communication of key organizational goals, including best-in-class delivery of music services to 100,000 commercial businesses in the U.S. and Canada and 25 million residences in North and South America.

Before becoming COO, Harrison served as General Counsel for DMX where he implemented the first successful direct licensing initiative to secure the public performance, reproduction and distribution rights to musical compositions directly from music publishers, resulting in 1,000+ licenses covering more than 5,000 catalogs. In addition, he represented DMX in its successful litigation efforts to obtain the first-ever adjustable fee blanket licenses from ASCAP and BMI to afford DMX credit against its blanket fees for the public performance of works licensed directly from music publishers, in which both courts adopted DMX's position, resulting in more than \$5.5mm in annual savings.

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- **In Re Application of THP Capstar Acquisition Corp. (now known as DMX, Inc.)**, 09 Civ. 7069 (DLC), 2010 U.S. Dist. LEXIS 131424, (S.D.N.Y. December 7, 2010); on appeal at 11-127-cv (Second Circuit). ASCAP sought payments of \$49.50 per location per year. Judge Cote adopted DMX's lowest proposal of \$13.74.

As General Counsel, Harrison was responsible for all necessary music licenses, including public performance, reproduction, distribution and synchronization associated with the musical compositions and sound recordings, as applicable, utilized as part of DMX' music services to (a) commercial establishments, (b) private residences, (c) personal computers and mobile devices as a digital stream and/or digital download, and (e) personal portable media devices or other physical media, and managed 2,000+ catalog-wide licenses with record labels, 1,000+ catalog-wide licenses with music publishers, and hundreds of individual synchronization licenses.

Since 2009 he has been an Adjunct Professor at the University of Texas Law School teaching the Music Law Seminar, which introduces law school students to the law as it applies to the music business. Topics include legal issues surrounding writing music, recording music, performing music, distributing music (both physically and digitally), licensing music, and miscellaneous but related topics such as trademarks and rights of publicity.

Harrison serves as a Board Member of the Austin Music Foundation, whose mission is to strengthen and connect the local music community with innovative programs that empower musicians and fuel Austin's creative economy.

He also serves as a Council Member of the Entertainment and Sports Law Section of the Texas State Bar, which is a voluntary organization within the State Bar of Texas and consists of more than 500 licensed attorneys throughout the state who practice entertainment and sports law. Section members represent a wide variety of clients including employers, employees and entertainment and sports organizations, in both the private and public sectors.

Harrison received both his JD and PhD (Political Science) from the University of North Carolina at Chapel Hill in 2001.

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# Exhibit C

To Declaration Of Michael DuKane In Opposition  
To Defendant Harrison's Motions To Dismiss



Manage Account (<http://www.dmx.com/pandora/manage-account/>)  
 Contact Us (<http://www.dmx.com/pandora/contact/>)  
 About DMX (<http://www.dmx.com/pandora/about/>)

Why Pandora for business? (<http://www.dmx.com/pandora/why-pandora-for-business/>)

Activate Player (<http://www.dmx.com/pandora/activate/>)

Get Support (<http://www.dmx.com/pandora/get-support/>)

Home (<http://www.dmx.com/pandora/>) About DMX

## Where great brands make sense.



DMX is a leading global provider of music and other experiential branding services for businesses. For over 40 years DMX has been designing and delivering experiences to enhance the brands of over 100,000 businesses and delivering music to entertain over 25 million homes around the world on cable systems and on DirecTV with our SonicTap digital music service.

DMX's full suite of brand enhancing services includes everything a business needs to connect with customers and create an unforgettable experience:

- Music Services and Strategy: in-store, online, interactive, and promotions and events
- Video (music and lifestyle video) and digital signage
- Audio Messaging: In-store and on-hold
- Mobile Services: SMS Messaging, Mobile Web, and mobile music content
- Scent: on-site fragrance marketing
- Audio/Visual Systems: design, engineering, and installation

DMX designs and delivers music and other experiences for some of the world's most iconic brands including: Nike, H&M, Express, .Lucky Brand, J\*Crew, Williams Sonoma, DKNY, Ralph Lauren / Polo, Chick-Fil-A, Olive Garden, Hallmark, Claire's, True Religion, Coach, Starwood Hotels, The Wynn, 24 Hour Fitness, MGM Resorts, Swatch, Tumi, and thousands of other brands.

For more information about DMX visit: [www.dmx.com](http://www.dmx.com) (<http://www.dmx.com/>)

For more information about SonicTap and to download music visit [www.sonictap.com](http://www.sonictap.com) (<http://www.sonictap.com/>)

## About Our Partner, Pandora



Pandora® internet radio brings people music they love anytime, anywhere. Personalized stations launch with just a favorite artist, track or genre, and listeners can refine their stations with simple thumbs-up and thumbs-down feedback. With personalized experiences from any

starting point in the music universe, tens of millions of people turn on Pandora to discover new music and hear music they love.



Copyright © 2011 DMX. All rights reserved. (<http://www.dmx.com/pandora/privacy-policy/>)  
 Contact Us (<http://www.dmx.com/pandora/contacts/>) Terms of Service (<http://www.dmx.com/pandora/terms/>)  
 Green Certified (<http://www.dmx.com/pandora/green-certified/>) Privacy Policy

### General Support FAQ

For immediate solutions to frequently asked questions, check out our support area (<http://www.dmx.com/pandora/get-support/>).

### DMX Corporate

1703 West Fifth St.  
 Suite 600  
 Austin, TX 78703

**DMX Sales and Support for the Pandora service for business**

Toll free: 1-800-929-5407

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## Austin's DMX, Pandora team up for new product aimed at businesses

By Gary Dinges

AMERICAN-STATESMAN STAFF

Austin-based commercial music services company DMX Inc. and Internet music giant Pandora have teamed up to offer customizable radio stations to businesses big and small.

The new service, Pandora for Business, allows companies — everything from car dealerships to doctors' offices — to gain access to an extensive music library from which they can decide what customers hear.

Like Pandora's offering for consumers, the new product allows businesses to craft their own radio stations by selecting an artist, song or genre. Pandora then picks comparable music that users can choose to keep or drop from their custom station.

"Businesses have been asking us for years to offer a commercial solution for Pandora," said Jessica Steel, Pandora's executive vice president of business development and corporate development. "Music plays a central role in enhancing retail and service environments."

Many businesses, DMX and Pandora say, are playing unlicensed music, mostly because of ignorance of the law.

Performers and songwriters both are due royalties when their works are performed publicly, said Chris Harrison, DMX's chief operating officer.

"There's an enormous amount of businesses out there that aren't paying royalties and should be," Harrison said. "Artists ought to be paid for having their music played. This opens up an enormous amount of revenue for singers and songwriters."

DMX executives estimate the percentage of businesses paying royalties is somewhere in the single digits.

"Our background is playing by the rules and taking the high road," said John Cullen, the company's CEO.

The service costs \$24.95 per month per location with no long-term contract. There's a one-time fee of \$99.95 to purchase DMX's media player, but the company has temporarily dropped the price to \$74.95.

DMX — which has 375 employees in the United States, Canada and Latin America, including 175 in Austin — already offers a selection of music to more than 100,000 businesses worldwide, including Saks, Express, Gold's Gym, Pizza Hut, Pier 1 Imports and Austin-based Whole Foods.

Cullen and Harrison say they expect DMX's latest offering will appeal more to small-business owners, especially hotels, retailers and restaurants.

"There's such an unserved base out there," Cullen said. "We see this as beneficial for us and for Pandora."

Details on the new offering can be found at [www.dmx.com/pandora](http://www.dmx.com/pandora).

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## Pandora Partners With DMX on Legal, Personalized Streaming Music for Businesses

### Gear Up

by: Scott Steinberg



Pandora for Business by Pandora and DMX.  
Courtesy of DMX

Online radio service Pandora has partnered with marketing firm DMX to bring online streaming music and personalized song channels to businesses of all sizes, effectively immediately. A legal and customizable solution for beaming endless online tunes on-demand to retailers, restaurants and offices, the service hopes to provide entrepreneurs with a hipper alternative to Muzak.

"Music plays a vital role in the experience that someone has in any environment such as a store, hotel, spa, gym, or office," says DMX chief operating officer Chris Harrison. "It can impact time spent in the store, purchase amounts, perception of value, [customer] loyalty and the likelihood of word-of-mouth advertising. Music also represents and conveys brands' personalities to the world." In other words, he claims, in today's age of choosier customers and split-second snap judgments, even dentists and car dealerships can no longer afford to keep the dial stuck on Wham!'s greatest hits, unless milquetoast is the vibe they're looking to hit.

Access to streaming music, customizable by artist, genre or preferred song type, is made possible via a \$99.95 (temporarily discounted to \$74.95) set-top media player unit with \$24.95/month per location subscription fee attached. Requiring a wired DSL or cable broadband Internet connection of at least 150Kbps speed to operate, systems will offer subscribers access to all Pandora artists, tracks and musical categories, including seasonal holiday jingles. Functioning in the same way as does Pandora's existing consumer service, users will be able to customize personal radio channels that reflect their taste by specifying preferred artists and acoustic genres. Optional settings further allow filtering of explicit content to daytime broadcast radio standards, so shoppers won't accidentally be subjected to Snoop Dogg's wittier, if less PC, couplets while browsing at the local optometrist.

"Ever since we launched our service, we've received inquiries from business owners large and small about offering a custom musical solution for their listeners," says Jessica Steel, EVP of business and corporate development for Pandora. "Now they finally have the opportunity to personalize the soundtrack for their establishments."

According to DMX, there's ample incentive to skip more obvious solutions such as simply putting a portable media player on shuffle as well. According to its research, nine out of ten retailers play in-store music to create a positive and pleasant atmosphere for shoppers. But of the 6 million total businesses out there, precious few realize it's illegal for owners to play unlicensed music in commercial outlets, penalties for which carry huge fines. "When playing

or performing music in public, as in your business, you must also adhere to U.S. Copyright Law and obtain and pay for proper licensing," Harrison explains. "Many people are unaware of the requirements, or think that if they've bought music (via iTunes or CD) that they have the right to play it in their business."

Of the roughly one in four retailers that currently play Internet radio or music from an iPod, studies find, most don't pay public performance fees to ASCAP or BMI, not knowing fees are attached. Beyond alleviating obvious legal risks, Harrison argues, his firm's solution is also a convenient and cost-effective way for professionals to make customers' ears perk up while putting a personal stamp on acoustics. "Pandora for business is zeroed in on the large, untapped local business market," he explains, given small business owners' more frequent and far-reaching ability to personalize in-store and office experiences than is possible with homogenized corporate chains.

As for why most still relying on instrumental covers of "Billie Jean" haven't upgraded to alternate high-tech or online solutions yet, which have previously been available, Harrison blames a variety of reasons from lack of awareness, tech savvy or perceived costs. Looking to change the status quo amongst both boutiques and chain stores alike, he claims that DMX's new solution should completely level the commercial playing field.

"Music is a critical part of the [business] experience, and owners should be more focused on it than ever," he says. "Pandora makes it simple to personalize music for clients... and DMX's media player also offers management control features to make sure that only the music you want to play is playing. You don't have to worry about losing CDs or employees throwing in one of their own that's inappropriate, or people stealing personal media players as well. It's a simple, affordable solution that's fully licensed and supports artists."